

converted, and transferred to a bank in Texas. When counsel for Farmar provided the documents required by, and in conformity with, the Binding Agreement, Musselman and Avia refused to execute these proper documents.

3. In short, Avia and Musselman have improperly asserted that the Binding Agreement is ineffective and have refused to abide by its express terms. The conduct of Musselman and Avia has prevented the funds from being distributed to the various parties in accordance with the Binding Agreement.

II. FACTS RELATED TO THE ENFORCEMENT OF THE BINDING AGREEMENT

1. On April 13, 2004, at an injunction hearing before Judge Jay Patterson, in Dallas, Dallas County, Texas, the Parties read into the record a Rule 11 Agreement. A true and correct transcript of the Binding Agreement is attached as Exhibit "A" and incorporated herein.

2. The Binding Agreement was a settlement of all the claims, causes of action, disputes, and issues between the Parties that were pending in this case.

3. The Binding Agreement *expressly* provided that the only condition precedent to the Binding Agreement was the transfer of the disputed funds to a bank in the United States.¹ The Parties also pledged to use their good faith efforts to have the money, which was tied up in Mexico, to be transferred to the United States to be distributed in accordance with the Binding Agreement.²

4. Before concluding the Binding Agreement, Judge Patterson requested that every party expressly state that they agreed with the terms of the Binding Agreement.³ In response, each party expressly agreed on the record to the terms of the Binding Agreement.⁴

5. Moreover, counsel for Navarro made it expressly clear on the record that once the

¹ See Ex.A—Transcript of Proceedings dated Tuesday, April 13, 2004 ("Binding Agreement") at 13:25-14:12 (emphasis added).

² See Ex. A—Binding Agreement at 10:13-25.

³ See Ex. A—Binding Agreement at 36:13-38:11.

⁴ See *id.* See also *id.* at 33:23-34:2 ("MR. MARSH: My name is Curtis Marsh, and I represent Mr. Musselman. On behalf of Mr. Musselman, it is agreed. MS. ELKJER: And with me, it is also agreed.").

funds were transferred to Texas, the Binding Agreement required only the further execution of three documents—an assignment, a ratification, and a mutual release.⁵

6. Thus, the Binding Agreement required the Parties to cooperate in the effort to transfer funds, which were then held in banks and/or by Courts in Mexico, to a restricted checking account in Texas. The transfer of these funds was the *only* condition precedent to the enforceability of the Binding Agreement.⁶

7. Farmar and Navarro, in reliance on the Binding Agreement, contacted and utilized the services of Mexican attorneys to make sure that the funds were transferred to Texas as provided by the Binding Agreement.

8. Farmar also agreed to utilize the services of Southwest Bank of Texas (now Amergy Bank) to ensure that the money was properly transferred to the United States, that the exchange rate was as favorable as possible, and that the normal fees to transfer monies into the United States were waived.

9. Pursuant to the efforts of Navarro and Farmar, the money was transferred to an account at Southwest Bank of Texas in Houston (now Amergy Bank). The transfer of these funds fulfilled the only condition precedent to the enforceability of the Binding Agreement.

10. Accordingly, the only remaining steps to be taken were: 1) execution of a Mutual Release; 2) execution of the Assignment and Ratification documents; and 3) proper distribution of the funds in accordance with the Binding Agreement.⁷

11. By letter dated September 17, 2004, W. Pruitt Ashworth, attorney for Farmar, provided the documents necessary to conclude the settlement: 1) Ratification; 2) Assignment; and

⁵ See Ex. A—Binding Agreement at 9:11-10:8 (addressing the assignment and ratification); 14:12-14 (discussing the transfer of funds as the only condition precedent); and 28:18-23 (reflecting admission by Ms. Elkjer that Binding Agreement was not subject to documentation).

⁶ See Ex. A—Binding Agreement at 13:25-14:12 (emphasis added).

⁷ See Ex. A—Binding Agreement at 9:11-10:8 (addressing the assignment and ratification); 14:12-14 (discussing the transfer of funds as the only condition precedent); and 28:18-23 (reflecting admission by Ms. Elkjer that Binding Agreement was not subject to documentation).

3) Mutual Release.⁸ See Ashworth letter of September 17, 2004 with attachments (attached as Exhibit B). Once these documents were signed and properly executed, the money could be distributed in accordance with the Binding Agreement. Unfortunately, Musselman and Avia de Mexico, have refused to sign the necessary documents.

12. The Binding Agreement expressly provides that the execution of subsequent documentation was *not* a condition precedent:

once the money gets up to the U.S. to the extent we can get it up to the U.S. . . . then we will divide it up in accordance with what I just told the Court. Now, if in fact we do not—or are not successful in doing what we want to do, then there is no agreement. These are the conditions precedent. Now the flip side of it is, if in fact we accomplish this and the money comes to the U.S., *then* this is a binding settlement agreement that we are reading into the record, *and* all of the things will be done.⁹

To further emphasize that the Binding Agreement was a complete agreement that had only one condition precedent—the transfer of the funds to the United States, the counsel for Navarro expressly stated that “[i]t will not—the intent is not to get the money up here and then say, ‘king’s ex, we are going to fight over the money.’ We are not agreeing to that.”¹⁰

13. To ensure that there was no dispute about the role of subsequent documentation, counsel for Navarro pointedly asked Ms. Elkjer if it was her position that “our settlement agreement on the record [was] subject to documentation?”¹¹ Ms. Elkjer expressly responded “[n]o, no, no.”¹² No other party interjected and corrected Ms. Elkjer or Mr. Elrod regarding the role of subsequent documentation.

III. CONCLUSION AND REQUEST FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Farmer and Navarro pray that the Court grant

⁸ See Ex. B—Ashworth letter; *See also* Ex. A—Binding Agreement 9:11-10:9; 14:12-14; and 28:18-23.

⁹ See Ex. A—Binding Agreement at 13:25-14:12 (emphasis added).

¹⁰ See Ex. A—Binding Agreement at 14:12-14.

¹¹ See Ex. A—Binding Agreement at 28:18-22.

¹² See *id.* at 28:23.

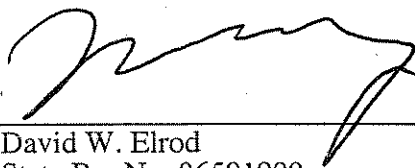

in all respects their Motion to Enforce, and that it award to Farmar and Navarro their attorney's fees proved up and incurred. Farmar and Navarro further pray for all such other relief, whether general or special, both at law and in equity, to which they are entitled.

Respectfully submitted,

By: 
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**ATTORNEYS FOR DEFENDANT AND
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CARLOS NAVARRO**

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of June, the forgoing pleading has been served upon all counsel of record in accordance with the Texas Rules of Civil Procedure via certified mail, return receipt requested.




W. Pruitt Ashworth

CERTIFICATE OF CONFERENCE

This is to certify that I have discussed the Rule 11 Agreement with all the attorneys in this case and there is no agreement regarding its enforceability.

Signed the 15th day of June, 2005.



W. Pruitt Ashworth

REPORTER'S RECORD

COPY

VOLUME 1 OF 1

TRIAL COURT CAUSE NO. 03-3314-K

AVIA ENERGY DEVELOPMENT, LLC,) IN THE DISTRICT COURT
AVIA DE MEXICO S. DE R.L. DE)
C.V., and JAMES C. MUSSELMAN,)
Plaintiffs,)
VS.)
THOMAS O. HICKS and JACK D.)
FURST,)
Intervenors,)
VS.) OF DALLAS COUNTY, TEXAS
CARLOS FRANCISCO NAVARRO)
and MICHAEL FARMAR,)
Defendants and)
Third-Party Plaintiffs,)
VS.)
JACK LAFIELD and JOHN HUGHETT,)
Third-Party Defendants.) 192ND JUDICIAL DISTRICT

RULE 11 AGREEMENT

TUESDAY, APRIL 13, 2004



On the 13th day of April 2004, the following
proceedings came on to be heard in the above-entitled
and numbered cause before the Honorable Jay Patterson,
Judge Presiding, held in Dallas, Dallas County, Texas.

Proceedings reported by machine shorthand.

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Also Present: Roberto Aparicio Moreno
Miguel Angel Abramo Martinez
And many others not identified

* * *

P R O C E E D I N G S

THE COURT: Are we ready to get on the record?

MR. ELROD: Yes, Your Honor, we are.

THE COURT: Okay. Have you reached an agreement?

MR. ELROD: Yes, Your Honor, we believe we have. This is David Elrod --

THE COURT: We have some doughnuts and coffee we could bring out, if that would help you all in reaching an agreement in this matter.

MR ELROD: We may need to bring out the doughnuts.

Your Honor, my name is David Elrod. I'm here on behalf of Carlos Francisco Navarro, and I believe we have reached an agreement in this case that we want to read on the record.

It is a very complicated little agreement, but let me give it my best shot and see if Mr. LeClair wants to -- who represents Mr. Hicks and Mr. Furst, or Ms. Elkjer or Mr. Marsh who represent Avia Energy Development, L.L.C., or Avia de Mexico and Mr. Musselman have any additions to it they want to make.

1 THE COURT: Do you have the cause number?

2 MR. ELROD: Mr. Ashworth is here on
3 behalf of Mr. Farmar, who has been joined in the
4 lawsuit.

5 THE COURT: Let me interrupt you a
6 second. This is Cause Number 03-3314-K, out of the
7 192nd District Court, Avia Energy Development, et al.,
8 versus -- let's see, Navarro, et al.

9 MR. ELROD: Yes, Your Honor.

10 THE COURT: All right. Please go ahead.

11 MR. ELROD: As a part of the agreement,
12 there is money that is down in Mexico. Part of it is
13 in a Mexican bank called Bancomer, which was a party
14 to this case to begin with, and the rest of it is in
15 various courts in Mexico based upon actions that are
16 pending in Mexico.

17 What we have agreed here amongst the
18 parties in this lawsuit here in Dallas is that we will
19 all agree that a mutual injunction should be entered
20 in this case involving all parties that are here today,
21 and that none of the moneys that are in Mexico will be
22 affected by any actions taken by any of the parties
23 here.

24 In other words, we want to maintain the
25 status quo of the moneys that are in Mexico. If they

1 are in Bancomer Bank, they stay in Bancomer Bank. If
2 they are in the registry of the Mexican court, they
3 stay in the registry of the Mexican court, and that
4 none of us will take or cause any action to be made to
5 affect that money without -- without the consent of
6 Mr. Farmer, Dr. Navarro, and Mr. Musselman. It takes
7 all three of them to consent before something can
8 happen to this money.

9 Now, as to the -- as to the -- and the
10 purpose of that is, we are going to try to resolve
11 the lawsuits that are pending in Mexico in order to
12 transfer the moneys up to an escrow account so that we
13 can disburse the moneys pursuant to what I'm getting
14 ready to tell the Court is the formula.

15 Now, there will be -- there are \$320,000
16 of a judgment to Mr. Gomez in Mexico. That's not part
17 of this. That money stays separate in the sense that
18 we are not going to bring that money to the U.S.

19 Out of the total moneys, there will be
20 \$320,000 paid to Gomez, or however that's resolved by
21 Dr. Navarro.

22 There will be \$300,000 paid to Clay Tank,
23 which is a creditor.

24 There will be \$375,000 that goes to Dr.
25 Navarro to take care of Mexican obligations such as

1 taxes and these types of things, or to him personally
2 if all of that is resolved.

3 There is \$635,000 that goes to Mr.
4 Farmar.

5 There is \$745,000 that goes to Mr. Hicks
6 and Mr. Furst.

7 There is \$175,000 that goes to Mr.
8 Musselman. And that's for a total of \$2,550,000.

9 Now, one of the issues we have here is
10 that 17 million of that is in pesos. And so depending
11 upon the conversion rate, it may be greater than or
12 less than that, and so that is the rough number that
13 we have for the Court.

14 Also in this matter, all attorneys -- all
15 attorneys will be paid by the respective clients. And
16 what I mean by that is, if we resolve those actions in
17 Mexico, that doesn't mean that the Mexican attorneys
18 who are working on it will grab part of those moneys.

19 That means that in fact the total amount
20 -- it is \$375,000 plus \$320,000, the Gomez money and
21 the \$375,000 going to Dr. Navarro in Mexico, that
22 jointly will be used to resolve those attorney's fees
23 in Mexico that are an obligation in Mexico as well as
24 the creditors and the tax, other than the attorney
25 that's currently working for Mr. Musselman. And that

1 attorney is --

2 MR. ABRAMO-MARTINEZ: Miguel Abramo.

3 MR. ELROD: And he will be paid directly
4 by Mr. Musselman, not out of any of the \$375,000 or
5 the \$320,000 that's going to stay in Mexico.

6 All the attorneys up here will be paid
7 by the respective clients. It is not -- so if they
8 want to take their share of the money and pay their
9 attorneys, that's up to them how they handle that
10 payment.

11 Now we have an issue of who owns Avia
12 de Mexico, and that is a Mexican corporation that was
13 incorporated in Mexico. And there has been a dispute
14 in the case about who owns that corporation, Your
15 Honor. And part of the settlement we resolve as
16 follows:

17 There was a transfer of 99 percent in
18 Avia de Mexico by Avia U.S.A., and that transfer was to
19 Dr. Navarro, and the documents are before this Court.
20 Certified copies of that transaction have been filed in
21 this matter.

22 That transaction will be ratified by
23 Avia U.S.A., and the proper steps will be taken by
24 Mr. Musselman and Avia U.S.A. to make sure that that
25 transaction is ratified and acknowledged and that Dr.

1 Navarro owns 99 percent of Avia de Mexico.

2 There is a 1 percent of Avia de Mexico
3 owned by Mr. Musselman individually, and that part of
4 the agreement will cause Mr. Musselman to transfer that
5 1 percent of the ownership in Avia de Mexico to the
6 designee of Dr. Navarro, so there will be 100 percent
7 ownership of Avia de Mexico by Dr. Navarro as part of
8 this settlement.

9 The Court entered an interlocutory order
10 setting aside that part of the order, and the agreement
11 calls that that interlocutory order will be withdrawn
12 in accordance with the parties' agreement.

13 The parties also jointly agree to take
14 all actions necessary and to execute all documents
15 which are required in order for Avia de Mexico to
16 perform and fulfill its corporate obligations and to
17 reduce and resolve any tax issues in Mexico. And
18 that's a joint obligation on all of the parties in the
19 room, so we all have to jointly take whatever steps are
20 necessary to resolve these issues in Mexico in order to
21 maximize the reduction of any potential tax obligations
22 that would happen to Avia de Mexico in Mexico, and to
23 make sure that Avia de Mexico in fact fulfills its
24 corporate obligations under Mexican law. And that's
25 everybody's obligation to this agreement.

1 There will be mutual releases signed
2 by all parties in this action. Also, part of the
3 resolution of the claims pending in Mexico --

4 THE COURT: Are they mutual general
5 releases?

6 MR. ELROD: Yes, Your Honor, they will be
7 mutual general releases of everything. We don't want
8 any more litigation between these parties, Your Honor.

9 Also what we are going to do--and it is
10 a joint obligation on the parties' behalf--is that we
11 are jointly setting up a procedure that we can resolve
12 those issues in Mexico, and that's that we will get
13 releases from the claimants in Mexico as part of the
14 resolution of their particular claims. We think we
15 have come up with a mechanism to do that. Also, it
16 will call for a dismissal of the lawsuit with prejudice
17 by all parties and its counterclaims, interventions and
18 everything else.

19 To facilitate the matter, we also have --
20 there are certain actions that we have mentioned
21 pending in Mexico. One of them is Mr. Farmar has a
22 judgment that's on appeal. And in order to accomplish
23 this, we are going to withdraw the objection to that
24 judgment where that judgment can go to conclusion.

25 So there is one exception to the mutual

1 injunction, and that is, we are going to take actions
2 that are necessary to resolve those issues in Mexico.
3 So I guess we need to clarify this. If we are all
4 enjoined from doing anything, then we can't do anything
5 to get done what we need to get done.

6 Part of what's going to happen is they
7 are going to -- Avia de Mexico will withdraw its
8 objection to Mr. Farmer's lawsuit in order that we
9 could get those moneys. Mr. Farmer has agreed then
10 once that judgment is final, those moneys will come
11 up to an escrow account in Dallas, and that no one can
12 touch those moneys without the consent of Mr. Farmer,
13 Dr. Navarro, and Mr. Musselman. So the goal is to get
14 that judgment of Mr. Farmer in Mexico final so we can
15 get those moneys out of Mexico up to an escrow account
16 in the U.S. so we can divide them up in accordance with
17 the agreement.

18 Also what we have further agreed to do
19 is to give a very limited power of attorney under Avia
20 de Mexico to counsel for Mr. Musselman in Mexico, and
21 that's limited to this extent. Before anyone can take
22 any actions on judgments down in Mexico or transfer any
23 moneys, it is going to take our consent. So we -- they
24 need to designate --

25 MS. ELKJER: Our consent.

1 MR. ELROD: That's what I'm saying.
2 All of our consent. So they need to designate a
3 representative from Mexico. We have a designated
4 representative from Mexico--Dr. Navarro. And so before
5 one party can take any action as to a judgment, it has
6 to have both of us signing off on it. In other words,
7 it has to be a mutual decision, Your Honor.

8 THE COURT: When you say "all," do you
9 mean the same three individuals which you mentioned
10 previously?

11 MR. ELROD: The same three individuals
12 that I have mentioned, Your Honor, and I'm limiting
13 that to the three individuals. And that has to be
14 Mr. Farmar, it has to be Dr. Navarro, and it has to be
15 Mr. Musselman sign. And of course that incorporates
16 the two corporations because amongst the three of us --
17 among Dr. Navarro and Mr. Musselman, we control those
18 two companies.

19 And so once Mr. Musselman's side agrees
20 and Dr. Navarro's side agrees, that's an agreement by
21 Avia de Mexico and Avia of the U.S.A. So we don't
22 need -- we will not need the agreement of Mr. Lafield
23 or Mr. Hughett for that. Just Mr. Farmar, Dr. Navarro,
24 and Mr. Musselman, whoever their designee is.

25 And once the money gets up to the U.S.,

25 Does anybody have anything to add?

1 MR. LeCLAIR: I'm Lewis LeClair. I
2 represent Thomas Hicks and Jack Furst.

3 And I do want to clarify for the record,
4 although I agree with Mr. Elrod that the events that
5 he outlined are the ultimate effect of the settlement,
6 I do want to be sure that we understand how things are
7 to operate in the interim.

8 Because the problem that we have here is,
9 I think that Mr. Elrod's side of the table has some
10 perceived advantage in Mexico, and this side of the
11 table has some perceived--whether real or not--
12 advantage if the money is up here. And so both sides
13 are trying to protect to make sure that they are fully
14 protected from -- by virtue of this settlement, from
15 something happening untoward in one place or another.
16 Mr. Elrod has very carefully protected that if the
17 money is up here, we have a deal, and so the money
18 flows the way he has said.

19 At the same time, what our side of the
20 table is trying to make sure is that while we are in
21 agreement to transfer the ownership as indicated to
22 Dr. Navarro and Avia de Mexico, that that is in
23 contemplation that all of this happens in accordance
24 with the settlement agreement. And what we are not
25 prepared to do is grant total control of Avia de Mexico

1 to Dr. Navarro until -- unless and until this all comes
2 together the way it is supposed to come together.

3 And so for that reason --

4 THE COURT: Do you all contemplate a
5 final closing, do you?

6 MR. ELROD: Yes, Your Honor, we do.

7 MR. LeCLAIR: Yes.

8 THE COURT: So that once you are ready
9 with the funds in escrow and documentation to transfer
10 ownership, there would be a simultaneous closing. Is
11 that right?

12 MR. ELROD: Yes, Your Honor. And Mr.
13 LeClair is right, and I didn't mean to say that the
14 transfer is going to occur before all this happens.
15 That's why we have an obligation on all of us to
16 jointly take all actions necessary to make sure it
17 happens.

18 THE COURT: Is it the intent of all
19 parties that this Rule 11 agreement is an enforceable
20 settlement agreement?

21 MR. ELROD: Yes, Your Honor.

22 MR. LeCLAIR: It is an intention that it
23 be an enforceable settlement agreement.

24 THE COURT: I interrupted you, Mr.
25 LeClair. Sorry. Please go ahead.

1 MR. LeCLAIR: I also wanted to clarify
2 for the record, with respect to the money in Mexico, I
3 think it is important that we put on the record exactly
4 as best we understand it today the status of the money.

5 There are 17 million pesos that are tied
6 up in connection with a judgment of Michael Farmar in
7 Mexico that is on appeal, and so the parties are still
8 -- neither side has gotten control of that money. It
9 is on appeal in Mexico, and it is frozen for the time
10 being.

11 And our understanding is that pursuant
12 to this settlement agreement, when we are confident
13 that this is all going to work, we will withdraw our
14 objection to the Farmar judgment to allow that money
15 to be -- to be given to Farmar to flow up to escrow in
16 the United States. So that's the -- that's the
17 contemplation.

18 There is also -- there are also three
19 other claimants who have tied up money in Mexico.
20 There is Inocencio de Perez, who has --

21 DR. NAVARRO: Inocencio de Leon Perez.

22 MR. LeCLAIR: -- de Leon Perez who has
23 \$579,000 tied up in a Mexican court. There is an
24 Otto Hugo Sampogna who has approximately \$30,000,
25 as I recall, that's tied up in a Mexican court.

1 MR. ELROD: Oh, no, more than that.

2 DR. NAVARRO: There is not -- he never

3 got any money assigned to him. There was no --

4 MR. LeCLAIR: Okay. There is \$108,000

5 tied up --

6 MR. ELROD: It is \$108,500, and that's in

7 a Vancouver bank. \$100,500.

8 The amount that Mr. de Leon has is

9 \$575,500. And then there is the \$320,000 that Mr.

10 Gomez has a judgment on that's in the court.

11 MR. LeCLAIR: Well, is it everybody's

12 understanding that there is \$2,550,000 U.S. in total

13 that is down in Mexico that's the subject of this

14 agreement?

15 DR. NAVARRO: It depends upon the

16 exchange rate.

17 MR. ELROD: Yeah, it just depends upon

18 the exchange rate, the conversion rate.

19 MR. LeCLAIR: If you assume a conversion

20 rate of 11 pesos per U.S. dollar, doesn't it total

21 \$2,550,000?

22 MR. ELROD: Right.

23 MR. LeCLAIR: And that's as of today, the

24 exchange rate is approximately 11 pesos to U.S. dollar.

25 MR. ELROD: Right. But the agreement we

1 have to have is, we have to make sure we maximize the
2 value of that 17 million pesos.

3 MR. LeCLAIR: All right.

4 MR. ELROD: Your Honor, we don't want
5 somebody to demand we have to convert right away or
6 whatever, if we think it is going to get greater value
7 by waiting.

8 THE COURT: But it would be the value at
9 the time of the simultaneous closing or what?

10 MR. ELROD: No. We are going to try to
11 convert it as soon as possible.

12 MR. LeCLAIR: And --

13 MR. ELROD: As soon as we can, we are
14 going to try to maximize the value of that 17 million
15 pesos.

16 THE COURT: And the standard for some
17 of these things that it is impossible to make specific
18 now, is it a reasonable standard under Texas law?

19 MR. ELROD: Yes, Your Honor.

20 THE COURT: All right. Please go ahead.

21 MR. LeCLAIR: With respect to the
22 claimants in Mexico, the way in which the parties
23 contemplate this will occur is that Dr. Navarro will
24 negotiate with the Mexican claimants. And part of the
25 \$375,000 that is allocated to Dr. Navarro is to -- is

1 for him to dispose of the Mexican claimants, which will
2 then free up the money to allow it to be distributed in
3 accordance with the agreement.

4 And, obviously, then if Dr. Navarro is
5 successful in reducing the claims in Mexico below
6 \$375,000, then he benefits to that extent. And the
7 agreement is, if he cannot get it done for \$375,000,
8 then we have a failure of a condition of the settlement
9 agreement.

10 And so all of that has to occur during
11 this 90-day period, is for that negotiation to occur
12 to allow that money -- and in the meantime, and what I
13 want to be clear on the record is, in the meantime --
14 because what we do not want to have happen is money
15 flow out of the Mexican courts to any claimant unless
16 and until we are sure that we have received the money
17 that we are entitled to under this settlement
18 agreement.

19 MR. ELROD: Are you excluding the Gomez
20 money?

21 MS. ELKJER: No, even the Gomez.

22 MR. LeCLAIR: We are going to -- he is
23 excluded from coming back here, but his money is still
24 going to be tied up. We are not going to allow the
25 money of Gomez to flow out to Gomez unless and until

1 we are sure the settlement is going forward.

2 The idea is that the Gomez money will
3 stay in place until we have met the condition of the
4 settlement agreement that allows the money to flow to
5 the United States. That's the understanding of the
6 parties.

7 MS. ELKJER: And so we will continue to
8 take those actions until we get an agreement from
9 Gomez.

10 MR. ELROD: I thought Gomez had a final
11 judgment.

12 MR. LeCLAIR: Yes, but there is also
13 the possibility of filing an appeal in federal court
14 similar to what we have already done.

15 MR. ELROD: Okay.

16 MR. LeCLAIR: And so the idea is that we
17 will -- we would -- we would love it if we didn't have
18 to do that. But what I'm saying is, we are not going
19 to allow the Gomez money to flow out unless and until
20 we know our deal is going to make. And that's why we
21 are saying we want to have the ability to continue to
22 do that.

23 MR. ELROD: Well, I just thought it was
24 a final judgment.

25 MR. LeCLAIR: And I think it is the

1 agreement of the parties, since it is Avia de Mexico
2 that actually has to act with respect to the Gomez
3 money, that the parties here are jointly agreeing we
4 will jointly act to protect the money from Gomez until
5 such time as we have met the conditions of the
6 settlement agreement. Is that our agreement?

7 MR. ELROD: Well, I want to make one
8 thing clear about that. That Gomez money, that
9 \$320,000, to the extent that we can negotiate a
10 reduction of that amount, goes to the Mexican side.
11 It doesn't come back up here to anybody else.

12 MR. LeCLAIR: That is the agreement.
13 But what I'm saying is, we are not going to allow it
14 to be distributed until we know that the settlement
15 conditions have occurred and we have a deal that pays
16 people in accordance with the agreement.

17 MR. ELROD: I don't disagree with that.

18 MR. LeCLAIR: Okay. That's what I'm
19 trying to say. So until that time, we are jointly
20 agreeing that we will operate -- we will do what's
21 necessary, sign the papers as necessary to tie up the
22 Gomez judgment unless and until we reach the point in
23 time at which we know that settlement conditions have
24 occurred.

25 MR. ELROD: Right.

1 THE COURT: Now, does that -- what has
2 been stated on the record, does that correctly reflect
3 the agreement being entered into by all the parties
4 represented here this morning?

5 MS. ELKJER: (Indicating)

6 THE COURT: It does not?

7 MS. ELKJER: I have a few clarifications
8 also.

9 THE COURT: All right.

10 MS. ELKJER: My name is Kim Elkjer, and
11 I represent Avia U.S.A. and Avia de Mexico. And in
12 going through the list that Mr. Elrod went through, I
13 just want to clarify a few things.

14 One of the terms was that all parties
15 agree to execute all documents for Avia de Mexico to
16 fulfill its corporate obligations and tax
17 responsibilities, or something of that nature.

18 And I want to make it very clear that
19 Jim Musselman and the parties that I represent are not
20 taking responsibility for the tax liability. We will
21 cooperate to reduce the tax liability, but we are not
22 taking any personal responsibility for the tax
23 liability.

24 MR. ELROD: Kim, my point was that
25 obviously you all have to take all steps that are

1 necessary and execute those documents that we deem are
2 necessary to reduce and to resolve any tax liability of
3 Avia de Mexico in Mexico.

4 MS. ELKJER: And I just wanted to make it
5 was very clear. We will cooperate in that, but we are
6 not assuming any liability for those taxes. So -- I
7 mean, I just wanted --

8 MR. APARICIO MORENO: Maybe in Mexico,
9 that's what you're referring to. It may come with Jim
10 Musselman as an ex-partner because he is liable for
11 what's happened in the past, why did they have to pay
12 any taxes.

13 MR. ELROD: State your name for the
14 record.

15 MR. APARICIO MORENO: I'm Roberto
16 Aparicio from Mexico City.

17 MR. ELROD: And he's a lawyer in Mexico,
18 Your Honor.

19 THE COURT: And what -- do I understand
20 correctly that the agreement is that by entering into
21 this agreement, Ms. Elkjer's client is not assuming any
22 new liability that he may not have already had under
23 Mexican law?

24 MR. ELROD: That is correct, Your Honor.

25 THE COURT: All right.

1 MR. ELROD: What he has, he has. He is
2 not assuming anything new.

3 THE COURT: All right. Ms. Elkjer,
4 please go ahead.

5 MS. ELKJER: All right. The next thing
6 that I wanted to bring up, which I think Lewis may have
7 clarified, but with regard to the actions pending in
8 Mexico and the money that is going to stay in Mexico,
9 nothing here today is going to prohibit actions being
10 taken to keep those moneys in the Mexican courts until
11 such time as the settlement is final.

12 So there will continue to be -- until we
13 either get an agreement with the Mexican claimants or
14 have the full settlement final, actions will continue
15 to be taken in Mexico to protect those moneys until
16 that time.

17 MR. ELROD: It is just we are doing it
18 jointly now.

19 MR. MARSH: Yes.

20 MS. ELKJER: Well, then if we are -- if
21 we are doing it -- if we are doing it jointly, then
22 we need Dr. Navarro to not unreasonably withhold
23 consent to filing things. Like, for instance, in the
24 Gomez lawsuit, dual powers needs to be filed within the
25 next two weeks or that money is going to flow to Gomez.

1 So we need an agreement that Dr. Navarro, when we get
2 the dual powers in place, will execute the necessary
3 documents to keep that in place.

4 MR. ELROD: Right. Right. Ms. Elkjer,
5 we don't have any problem with that. The same thing
6 is true on your side. But what we've got to do is have
7 all the attorneys agree on what needs to be done and
8 not get a 25-page agreement with all kinds of stuff in
9 it that's inappropriate, and so I think we can act in
10 that regard.

11 I really -- I really don't want to go
12 down this path. I think the parties -- I think the
13 parties can make an agreement that they need to do
14 what's necessary to protect the moneys so it doesn't
15 go to the claim until we get this resolved.

16 MS. ELKJER: Right. You also mentioned
17 that a limited power of attorney was going to be given
18 to counsel for Mr. Musselman so that certain actions
19 can be taken.

20 And I want to clarify that in Mexico, and
21 so we all understand this, to get -- to give a power
22 of attorney in Mexico, there has to be a shareholders
23 meeting in which the power of attorney is given. So
24 that means that there will have to be a shareholders
25 meeting of Avia de Mexico to give Miguel Abramo this

1 limited power of attorney with regard to handling the
2 lawsuit and handling the bank.

3 And I understand that this is going to
4 be a joint power of attorney given to Dr. Navarro and
5 Miguel Abramo so that Avia de Mexico cannot act in this
6 regard without both of their signatures. However, they
7 both are making a commitment to take whatever actions
8 necessary to protect Avia and to keep the money in
9 place until we've got agreements with everyone.

10 MR. ELROD: Right. What we are going to
11 do in that regard is, to the -- I mean, we've got two
12 Mexican counsel here, and we will do what they tell us
13 is necessary and appropriate under Mexican law to give
14 Mr. Musselman's representative a very limited power of
15 attorney to handle those two things we have discussed.

16 MS. ELKJER: All right. And then the
17 last thing is, we have agreed to a mutual injunction.
18 I did not remember that it was limited to 90 days, but
19 we can take that up later and extend it, if we need to.

20 However, I do not believe injunctions are
21 valid until they are in writing. And so what I thought
22 we agreed to do was to have the temporary restraining
23 order in place until such time as the injunction went
24 into effect so that we always have people enjoined one
25 way or the other from affecting the Mexican accounts.

1 MR. ELROD: I believe that -- and Judge
2 Patterson can correct me if I'm wrong. But when we
3 all say, yes, this is our agreement on the record, this
4 is binding and enforceable, including the injunction,
5 among the parties in this room when we say yes.

6 I'm not prepared to agree to that at all
7 because I don't think that's what we are agreeing to.
8 I think once we say, yes, we have a deal before this
9 Court, then we have a deal, and this Court will hold
10 us to that deal.

11 MS. ELKJER: I guess I have a bit of a
12 concern because the deal was stated on the record, and
13 there can always be the argument that it was vague and
14 we didn't quite understand it to mean this. And so
15 until we get it in writing what this mutual injunction
16 is, I think that the temporary restraining order should
17 stay in place.

18 MR. ELROD: Are you telling me we do not
19 have a deal? You're not going to tell the Court today
20 that this is our settlement agreement on the record
21 subject to documentation? Because if that's what you
22 are saying, then we don't have a deal.

23 MS. ELKJER: No, no, no. I'm just saying
24 that I think the injunction needs to be put in writing;
25 and until such time as it is put into writing, the

1 restraining order is extended.

2 MR. ELROD: Yeah, we cannot agree to that
3 TRO.

4 THE COURT: Why can't you do the
5 temporary injunction today and get it back here for my
6 signature?

7 MR. ELROD: We can. It is just a simple
8 one-page mutual injunction.

9 THE COURT: In fact, we would let you --
10 we would let you use our computer equipment if you
11 wanted to do it right here.

12 MR. ELROD: Yeah, it is just a one-
13 paragraph deal, Your Honor. In fact, we've got a Rule
14 11 in place that basically says that. So I'm not real
15 concerned about the language. We just cannot execute a
16 four-page extended TRO that has all kinds of stuff in
17 it that we are not agreeing to.

18 MS. ELKJER: I'm not even asking you to
19 execute anything. I'm just saying that the TRO that's
20 in place right now is extended until the injunction is
21 put in writing --

22 MR. ASHWORTH: What the judge is saying
23 is do it right now.

24 THE COURT: Why not just go ahead and do
25 the temporary injunction right now?

1 MR. ELROD: We can do that, Your Honor.

2 MS. ELKJER: Okay.

3 MR. ELROD: I'm just concerned. I need
4 Ms. Elkjer's assurance, like Mr. LeClair and I have
5 given to this Court, that this is a binding settlement
6 we are doing today, not that we are going to have some
7 issues, is it foggy or is it --

8 I mean, I think the terms are very clear,
9 and we need to have Ms. Elkjer commit on her client's
10 behalf, and we need to have Mr. Marsh commit on his
11 client's behalf, as Mr. LeClair and I have said. And
12 I guess we need Mr. Ashworth to do the same thing.

13 MR. ASHWORTH: Your Honor, I'm Pruitt
14 Ashworth, and I represent Michael Farmar. He is one
15 of the defendants in this lawsuit. He also has an
16 action in Mexico against money that is -- from an
17 account of Bancomer against Avia de Mexico.

18 One of the things -- and generally my
19 client agrees with everything that has been said. But
20 there is one clarification that I need to have because
21 when the parties are talking about the, quote, actions
22 pending in Mexico, it looks like --

23 I understood from our earlier discussions
24 that what was going to happen with regard to Mr. Farmar
25 is that a judgment was going to be dismissed, and then

1 that money was going to be put -- stay in Mexico until
2 it was transferred here to the United States.

3 But you also said at another point that,
4 quote, all the actions pending in Mexico are still
5 going to be fought. And so I need to be -- I need it
6 to be clarified as to what I understood, ways that
7 Mr. Farmar -- Avia de Mexico was going to withdraw its
8 objection to my client's appeal and, therefore, that
9 money -- that appeal would, on my client's behalf,
10 would become final in my client's favor. That money
11 will stay in Mexico until the parties agree how it will
12 come to the United States.

13 MR. LeCLAIR: Well, I think I can clarify
14 that, and I think the issue is this. And this goes
15 back to the issue about an injunction between Ms.
16 Elkjer and Mr. Elrod.

17 The problem is, we have -- we have two
18 parties who are Dallas residents or are subject to
19 jurisdiction of this court: Dr. Navarro and Michael
20 Farmar. And what we want is to be sure that we have
21 in place appropriate injunction power and contempt of
22 this court as necessary, that when and if they -- we
23 are going to allow them to get control of this money,
24 that in fact it will be brought up here in escrow as we
25 have agreed -- as all the parties have agreed.

1 So I am fine to do whatever is necessary
2 to get the money to Michael Farmar as soon as I have an
3 injunctive provision in place that assures me that the
4 full power of this court will assist me in getting that
5 money up here to the United States as we have agreed
6 that it will happen.

7 MR. ASHWORTH: My client has no problem
8 with that. What I'm trying to do is deal with a -- a
9 clarification because there are two other lawsuits in
10 Mexico that are being fought.

11 MR. ELROD: Your Honor, if I may
12 interrupt.

13 THE COURT: Yes, sir.

14 MR. ELROD: He is absolutely correct,
15 we have made that agreement. What we are going to do
16 is, Avia de Mexico will remove its objection to Mr.
17 Farmar's lawsuit. That will go to judgment so that we
18 can then move the money up to an escrow account that
19 we agree on in Dallas.

20 Now, the reason we want a mutual
21 injunction is for the same reasons Mr. LeClair wants
22 his injunction. We want to make sure that they are not
23 taking actions that are going to harm Avia de Mexico
24 long term or cause problems in resolving the Mexican
25 causes of action. And that's why it has to be mutual,

1 and that's why we are agreeing to jointly take these
2 efforts. So Mr. Ashworth's concern is not a concern.

3 THE COURT: I would encourage you all, as
4 soon as possible, to prepare an order for me to sign.

5 And I think there is some doubt under
6 Texas law about not having a bond, even if it is \$100,
7 to support the temporary injunction. And maybe there
8 is something already in place in the TRO, but I would
9 encourage you to prepare an order and get my signature
10 on it just as soon as you can.

11 MR. ELROD: Yes, Your Honor.

12 THE COURT: Now, and if you want to stay
13 here and -- I don't know -- we can go off the record
14 long enough to let David answer. I don't know if he's
15 in a position where he can assist you all in
16 preparation of an order or not.

17 THE COURT REPORTER: Certainly. I would
18 be glad to help with that.

19 MR. ELROD: I still need Mr. Marsh and
20 Ms. Elkjer to affirmatively state -- and I don't know
21 if Mr. Ashworth has -- that in fact these terms are
22 binding on their clients as a settlement agreement.

23 MR. MARSH: My name is Curtis Marsh, and
24 I represent Mr. Musselman. On behalf of Mr. Musselman,
25 it is agreed.

1 MS. ELKJER: And with me, it is so
2 agreed. But I'm concerned about the injunction, and
3 that is assuming that we get the injunction in place.

4 MR. ASHWORTH: Your Honor, I represent
5 Michael Farmar, and we do agree with the terms that
6 we have been discussing today and the statements or
7 clarification with regard to Mr. Farmar's action in
8 Mexico.

9 MS. ELKJER: Our Mexican attorney, Miguel
10 Abramo, has one clarification that he would like to
11 make.

12 MR. ABRAMO MARTINEZ: Just to clarify --

13 MR. ELROD: State your name for the
14 record.

15 MR. ABRAMO MARTINEZ: My name is Miguel
16 Abramo. Just to clarify, under Mexican law, what we
17 agree or what we are going to do under Farmar's case,
18 Farmar has to dismiss -- he filed against appeal
19 resolution.

20 And, simultaneously, we are going to have
21 an agreement before the Court where -- where Avia de
22 Mexico will agree to pay Farmar that money, and that's
23 a final resolution. That agreement itself is binding
24 resolution, like this agreement we are doing here.
25 So that's the way it will work out --

1 (There was a discussion off the record.)

2 MR. ABRAMO MARTINEZ: Yes, that's why the
3 agreement -- that's why the agreement --

4 (There was a discussion off the record.)

5 THE COURT: Now, let's -- just one person
6 needs to speak at a time if we want to keep a record.

7 MR. ABRAMO MARTINEZ: That's why the
8 agreement for tax purposes for Avia de Mexico because
9 there was a concern about it. That agreement is a
10 resolution, and it is like -- it is like an expense
11 being made by Avia de Mexico in favor of Mr. Farmar.
12 And then Mr. Farmar, as I understood, has an obligation
13 because of this agreement to disburse -- put the money
14 here now in an account.

15 MR. APARICIO MORENO: I just want to say
16 we agree. We agree with the settlement in court, and
17 with that settlement we will present in the other court
18 saying we have reached a settlement, and both parties
19 will represent that.

20 MR. ABRAMO MARTINEZ: Yes.

21 MS. ELKJER: And that settlement will be
22 presented to the court before any other deadlines in
23 the Farmar lawsuit?

24 MR. APARICIO MORENO: That will be a
25 cause of the dismissal.

1 MR. ABRAMO MARTINEZ: And that will be
2 signed by Dr. Navarro and myself representing Avia and
3 by Farmar's attorney for Farmar himself.

4 MS. ELKJER: And it will have to be filed
5 before April 25th because there are deadlines in that
6 case that Avia would have to take if the case is not
7 dismissed by April 25th, if the -- in Mexico.

8 MR. APARICIO MORENO: I'm sorry. And
9 this agreement will be amparo in Mexico. Is that
10 okay?

11 MR. ABRAMO MARTINEZ: No problem. No
12 problem.

13 THE COURT: I heard everybody commit that
14 this is their agreement. I'm not sure I heard Mr.
15 LeClair commit. Maybe you did.

16 MR. LeCLAIR: Oh, I thought I did, Your
17 Honor. But certainly on behalf of Mr. Hicks and Mr.
18 Furst, we agree to these terms and the amount that we
19 are to be paid in accordance with those terms.

20 THE COURT: Have all parties now on the
21 record entered their agreement to this settlement
22 agreement?

23 MR. LILLARD: I'm Tom Lillard, and I'm
24 here representing Mr. Lafield. And to the extent that
25 we are involved, we agree to the settlement agreement

1 that's been reached, primarily the part dealing with
2 complete, full, and mutual releases among all the
3 parties.

4 (There was a discussion off the record.)

5 THE COURT: Now, what logistically can we
6 do to --

7 MR. PORTERFIELD: Your Honor --

8 THE COURT: Oh, excuse me.

9 MR. PORTERFIELD: -- I'm Collin
10 Porterfield. I'm here for John Hughett. He is a
11 third-party defendant. I'm in the same position as
12 counsel for Hunton and Williams in that regard. All
13 we care about is getting Mr. Hughett out of this.

14 THE COURT: But you agree as far as your
15 client is involved?

16 MR. PORTERFIELD: I do.

17 MR. LeCLAIR: I probably need to make a
18 clarification out of an abundance of caution. I know
19 that this is a general release and that my clients,
20 Mr. Hicks and Mr. Furst, don't have any other business
21 relationships with these other folks except Mr.
22 Musselman.

23 So I want to be careful -- and this is
24 just out of an abundance of caution. His counsel and
25 I can work out the details to make sure that if there

1 are other business relationships, that we are not
2 unintentionally releasing some other business
3 obligation unrelated to this.

4 MR. ELROD: If there is, we can just
5 carve it out.

6 MR. LeCLAIR: That's a -- I don't think
7 that's an issue with anybody. I just wanted to, out
8 of an abundance of caution, be careful about that.

9 THE COURT: Does that cover all the
10 parties?

11 MR. ELROD: Yes, Your Honor.

12 THE COURT: What can we do to put
13 together to sign an order on behalf of the 192nd
14 District Court today?

15 MR. ELROD: Your Honor, all I think we
16 need to do is sit down and pen out a mutual injunction
17 and sign it and have the Court stamp it, and we are
18 ready to go.

19 MS. ELKJER: I think we even have a
20 computer here.

21 MR. LeCLAIR: I have a computer here.

22 THE COURT: Why don't you all remain here
23 to do that. And I will move my meeting, which was at
24 noon, to some other place. Okay?

25 MR. ELROD: Thank you, Your Honor.